Supreme Court, U.S.
FILED

10-607 SEP 16 2010

OFFICE OF THE CLERK

No. _____

IN THE
Supreme Court of the United States

Lt. Colonel Donald Sullivan
Petitioner

V.

STATE OF NORTH CAROLINA
Respondent

On Petition for Writ of Certiorari
To The North Carolina Court of Appeals

PETITION FOR WRIT OF CERTIORARI

Donald Sullivan, *Sui Juris*
Petitioner
Lt. Colonel, USAFR(R)
c/o General Post
Atkinson, North Carolina
[28421]
Ph. #910-617-2559

Questions Presented For Review

Recognizing that the whole nation is suffering under a systematic denial of a long established right, this case shows an egregious affront to standing precedent. Therefore, I, Petitioner Lt. Colonel Donald Sullivan, come before this Court on Appeal, specially but not generally, seeking affirmation of my assignments of error as stated below; and requesting this Court reverse my conviction by the court below, or in the alternative remand this case to the Superior court for a new trial. The questions for review follow:

1. Whether or not there exists under constitutional law a right which may not be restricted by the States to freely travel the public roadways and highways of the several united States and the Territories of the United States of America which must be recognized without infringement by the several States and Territories?

2. If such a right to travel does exist under federal constitutional law, whether or not, the several united States and the Territories of the United States of America can legislate mandates, under penalty of law, which burden, prohibit or permit said right to travel; or, are such burdens unconstitutional? For example, NCGS 20-313

and 20-279.18, "Proof of Financial Responsibility"; and NCGS 111.1, "Vehicle Registration".

3. Whether or not, the court of original jurisdiction in this instant matter violated my protected rights in its assumption of jurisdiction *in personam* and *in rem* over me, my private property and my use of said private property without having proven said jurisdiction, a denial of due process?

4. Whether or not, the courts below acted in violation of my right to counsel of choice when I was denied access to a lay person, not a licensed attorney, chosen by me as "Next Friend" to assist and counsel me at the "defendant's table" during the trial in Superior Court.

TABLE OF CONTENTS

INDEX TO APPENDICES..... iii

TABLES OF AUTHORITIES CITED..... iv

OPINIONS BELOW..... 1

JURISDICTION 2

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.. 3

STATEMENT OF THE CASE..... 5

REASONS FOR GRANTING THE PETITION 45

CONCLUSION 46

INDEX TO APPENDICES

APPENDIX A - Opinion of the North Carolina Court of Appeals entered 25 February, 2010, finding "no error" in the lower court's findings.

APPENDIX B - Order denying my Appeal of Right under NCGS 7A-31(c) on 16 June, 2010.

APPENDIX C - NCGS 20-313

APPENDIX D - NCGS 20-279.18

APPENDIX E - Opinion of the NC Supreme Court in *Honeycutt v. Scheidt*, 254 N.C. 607

TABLE OF AUTHORITIES CITED

CASES

Alexander v Bosworth (1915), 26 C.A. 589..... 41
Am. Mut'l Liab'y Ins. Co. v Chaput, 60 A.2d 118 .. 13
Argersigner v Hamlin, Sheriff 407 U.S. 425 42
Baldwin v Seelig, 294 U. S. 511 26
Barkley v Intn'l Mutual Ins. Co., 227 SC 38 ... 18,30
Bishop v Wood, 426 U.S. 341 44
Bolling v Sharpe, 347 U.S. 497 20
Boone v Clark 214 SW 607 7
Bowman Tr. Inc. v Ark. Best Fr't,, 419 U.S. 281 ... 29
Boyd v US, 116 US 616 8
Br'rh'd of RR v VA ex re VA St. Bar, 377 US 1,6 .. 44
Brown v Merlo, 8 Cal.3d 855 21
Browne v Keene, 33 US 112 40
Bue v Porazzo 48 Cal.App.2d 82 30
Cal'a Disc't Corp v Landis Mtr Co. 190 N.C. 157.. 33
Chandler v Frietag, 348 US 3 43
Chicago Mtr C'ch v Chicago 337 Ill. 200 ..10,18,32,36
City of Dayton vs. DeBrosse, 23 NE.2d 647, 650 .. 13
Clearfield Trust Co. v US, 318 U.S. 363 37
Commissioner of Corr's, et al, 393 US 483 44
Commonwealth v Ellett, 174 Va. 403 12
Conley v Gibson, 355 US 41, 45-46 (1957) 4
Dolan v City of Tigard, 512 U.S. 374 32
Edwards v California, 314 U. S. 160 8,25,27
Fid. Fed. S&L v De La Cuesta, 458 US 141 15
French v Amal'd Lcl Union 376, 203 Conn. 624 .. 21
Haines v Kerner, 404 US 519, 92 S.Ct. 594 5
Hale v Henkel, 201 US 43 39
Haynes v U.S. 390 U.S. 85 36
Hendrick v Maryland, 235 U.S. 610 35
Honeycutt v Scheidt, 254 N.C. 607 11,12,14,15
Int'l Motor Transit Co. v Seattle, 251 P. 120 13

Isakson v Rickey, 550 P.2d 359 21
Johnson v Zerbst, 304 U.S. 458 43
Kent v Dulles 357 U.S. 116, 125 6
Lo Bue v. Porazzo 48 Cal.App.2d 82 41
LaPoint v Richards, 66 Wn. (2d) 585 19
Ligare v Chicago 139 Ill. 46..... 10
McLellan v Miss. P&L Co., 545 F.2d 919 8
Melendez-Diaz v Massachusetts (No. 07-591) 16
Mylan Labs, 7 F.3d at 1134 5
Mut'l of Enumclaw v Wiscomb, 611 P.2d 1304 ... 19
NAACP v Button, 371 US at 429 32
Newbill v Union Indemnity Co., 60 SE.2d 658 12
Nollan v Ca. Coastal Commission 483 U.S. 825 .. 32
Olsen v Nebraska, 313 U. S. 236 26
Olson v. United States, 292 U.S. 246 32
Pennsylvania Coal Co. v Mahon, 260 U.S. 393 ..30,31
Platsky v C.I.A., 953 F.2d. 25 5
Picking v Pennsylvania R. Co. 151 Fed, 2nd 240 .. 6
Pucket v Cox 456 2nd 233 5
*Reading R.R. Co. v Johnson,*7 W & S (Pa.) 317 42
Reynoldson v Shillinger 907F. 2d 124, 126 (10th) .. 6
Royse v Boldt, 491 P.2d 644 17
Saenz v Roe, 526 U. S. 489 10,18,28
Schachtman v Dulles, 225 F.2d 938,941 9
Shapiro v Thompson, 394 U. S. 618 9,28,32,36
Sims v Aherns, 271 S.W. 720 43
Singh v Daimler-Benz AG, 9 F.3d 303 41
Stanard v Olesen, 74 S. Ct. 768 40
State v Phillips, 152 N.C. App. 679 43
State Farm, 463 U.S. at 43 29
Stuck v Medical Examiners, 94 Ca2d 751 40
Thompson v. Smith 154 SE 579 8
US v Comm. Trading Corp., 339 U.S. 121..... 31
United States v 50 Acres of Land, 469 U.S. 24 30

United States v Jackson, 390 U. S. 570 29
United States v Lopez, 514 U.S. 549, 558 15
US v Mincker, 350 US 179 34
US v Tarlowski, 305 F.Supp. 112, 1969 44
Wickard v Filburn, 317 US 111 33
Worthy v Herter, 270 F.2d 905, 908 6

STATUTES AND RULES

5 USC §556(d) 29
5 USC 706 12
28 U.S.C., Section 1257(a) 2
NCGS 20-111(1) 6,11,35,47
NCGS 116B-52 24
NCGS 20-279.18.....23,28,30,32,47
NCGS 20-313 6,11,22,23,35,47

OTHER

N.C. Law Review Vol. 32 33
NC "Uniform Driver's License Act" 9
The Hwy Safety Act (P.L. 89-564, 80 Stat. 731) ... 15

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgments below.

OPINIONS BELOW

The opinion of the North Carolina Court of Appeals appears at Appendix A to the petition and is published.

The order of the North Carolina Supreme Court denying appeal of right appears at Appendix B to the petition and is published.

JURISDICTION

The date on which the North Carolina Supreme Court denied review of the opinion of the North Carolina Court of Appeals in this case was June 16, 2010. The order was entered by the clerk on June 23, 2010. A copy of that order appears at Appendix B. No petition for rehearing was timely filed in this case.

The jurisdiction of this Court is invoked under 28 U.S.C., Section 1257(a) and Article III, United States Constitution.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Article III, Section 2, cl. 2: "In all the other cases before mentioned, the supreme Court shall have appellate jurisdiction, both as to law and fact..."

United States Constitution, Article I, Amendments to the Constitution: "Congress shall make no law respecting...the right of the people...to petition for a redress of grievances."

United States Constitution, Article V, Amendments to the Constitution: "No person shall be...compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall property be taken for public use without just compensation."

United States Constitution, Article VI, Amendments to the Constitution: "In all criminal prosecutions, the accused shall enjoy the right to...have the assistance of Counsel for his defense."

United States Constitution, Article X, Amendments to the Constitution: "The powers not delegated to the United States by the

Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

United States Constitution, Article XIV: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Now come I, Donald Sullivan, **a natural born citizen of the United States entitled to all rights and privileges granted or protected by the 1st, 4th, 5th, 6th, and 14th Amendments to the Constitution of the United States**, before this Honorable Court with my Petition for a Writ of Certiorari to have heard arguments in support of the reversal of the Order of the North Carolina Court of Appeals denying my Appeal of the findings by the court below in this instant matter.

I respectfully request the court to consider the substance of my pleadings and arguments and not the form, and to "...accept as true all well-pleaded allegations and...view the [brief] in a light most favorable to the [*pro se* litigant]". *Mylan Labs*, 7 F.3d at 1134. Pursuant to *Haines v. Kerner*, 404 US 519, 92 S.Ct. 594 and *Platsky v. C.I.A.*, 953 F.2d. 25, quoting *Conley v. Gibson*, 355 US 41, 45-46 (1957), because the courts hold "...the allegations of the *pro se* complaint...to less stringent standards than formal pleadings drafted by lawyers, the allegations of such [*pro se* litigant] must not be dismissed unless...it appears 'beyond doubt that the [*pro se* litigant] can prove no set of facts in support of his claim which would entitle him to relief." Finally, as

seen in *Picking v. Pennsylvania R. Co.* 151 Fed, 2nd 240 and *Pucket v. Cox* 456 2nd 233, **such pleadings are to be considered without regard to technicality**. Additionally, litigants appearing as themselves are to be given reasonable opportunity to remedy the defects in their pleadings or filings. See *Reynoldson v Shillinger* 907F. 2d 124, 126 (10th Cir. 1990). (Emphasis mine)

Deputy Kevin Malpass initiated this action as I was traveling as a private individual in my private property automobile on July 9, 2008. Deputy Malpass charged me with "failing to register vehicle with DMV" (NCGS 20-111(1)), and "operating a (motor) vehicle on a (street or highway) (PVA) without having in full force and effect the financial responsibility required by GS 20-313": "Guilty" at a bench trial in District Court on 23 September, 2008. I appealed *de novo* to Superior Court with no appeal bond. A jury trial was held on 23 and 24 February, 2009, with Judge Jay Hockenberry: "Guilty". I appealed to the State Court of Appeals. I was handcuffed and placed in jail until I could pay my appeal bond of $200.00.

My appeal was heard in the State Court of Appeals on 17 June, 2010. The opinion was issued 23 June, 2010, affirming the lower court's finding and denying my appeal. (See App. A).

I filed an Appeal of Right to the State

Supreme Court on 26 January, 2010. The order denying the appeal was issued on 16 June, 2010, and entry was made by the clerk of the Supreme Court on 23 June, 2010. (See App. B). From that order, I petition.

I have wasted enough time and money trying to validate the exercise of my federally protected rights: To travel; to have anyone I choose to counsel me in court; and to determine whether the term "jurisdiction" means anything. I have spent the past eleven years researching, studying, acting out and defending my basic constitutional rights as I understand them and putting myself and my family at risk in the name of "Liberty". It is the intent of this filing to complete that search for "truth, justice and the American way". I have now come to this Court for answers. I will be as brief and concise as possible, and I will appreciate your honesty, integrity and truth.

First, does the mythical and constitutional 'right to travel' exist in fact and in law; or has our liberty actually slipped through our fingers in the past 100 years? This discussion of the "right to travel" is a part of the discussion of jurisdiction. It gets us to the presumption by the State of authority over my liberty, where none such has been granted by any threat, by any action, by any contract or by any waiver. By way of illustration, we must first look at some precedents issued by the federal courts, including

this Court, which appear to support the constitutional right to travel:

> "The court is to protect against any encroachment of constitutionally secured liberty." *Boyd v US*, 116 US 616;
>
> "The conclusion that the right of free movement is a right of *national* citizenship stands on firm historical ground." *Edwards V. California*, 314 U. S. 160 (1941);
>
> "The Constitutional right to travel is 'among the rights and privileges of National citizenship'." *McLellan v. Miss. Power & Light Co.*, 545 F.2d 919, 923 n. 8 (5th Cir. 1977);
>
> "The right of the citizen to travel upon public highways and to transport his/her property thereon, either by carriage or automobile, is not a mere privilege which a City/State may prohibit at will, but a common right which he/she has under the right to Life, Liberty, and the Pursuit of Happiness." *Thompson v. Smith* 154 SE 579;
>
> "The right to travel is part of the Liberty of which the citizen cannot be deprived without due process of law under the Fifth Amendment." *Kent v. Dulles* 357 U.S. 116, 125 (See also *Worthy v. Herter*, 270 F.2d 905, 908 (D.C.Cir. 1959));

"The right to travel, to go from place to place as the means of transportation permit, is a natural right, subject to the rights of others...". *Schachtman v. Dulles*, 225 F.2d 938,941 (D.C.Cir. 1955);

Indeed, as Justice Stewart reminded us in *Shapiro v. Thompson,* 394 U. S. 618 (1969), the right is so important that it is,

"...assertable against private interference as well as governmental action . . . a virtually unconditional personal right, guaranteed by the Constitution to us all." *Id.,* at 643. "Without pausing to identify the specific source of the right, we began by noting that the Court had long 'recognized that the nature of our Federal Union and our constitutional concepts of personal liberty unite to require that all citizens be free to travel throughout the length and breadth of our land uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement.'" *Id.*, at 629.

"We further held that a classification that had the effect of imposing a penalty on the exercise of the right to travel violated the Equal Protection Clause 'unless shown to be necessary to promote a *compelling* governmental interest,'" *id.,* at 634, "and no

showing had been made." (Cited in *Saenz v. Roe*, 526 U. S. 489 (1999). (Emphasis mine).

This right to travel is nowhere better defined than in *Chicago Motor Coach v. Chicago* 337 Ill. 200, 169 NE 22, 66 ALR 834; *Ligare v. Chicago* 139 Ill. 46, 28 NE 934; *Boone v. Clark* 214 SW 607: "The use of the highway for the purpose of travel and transportation is not a mere privilege but a common and fundamental right of which the public and individuals cannot rightfully be deprived."

One must then ask, "How can a federal right so well-defined be so burdened by State and local regulation?" I think the answer is, "Ignorance". The State cannot default to its Tenth Amendment "reserved" "police powers" in order to so burden our right to travel, because it is bound by the chains of the Constitution, the Highway Safety Act of 1966 and federal funding, aka "the Supremacy Clause". Yet, the operation and ownership of the automobile has become a sacred and abused cash cow for the State due to our willingness to subjugate our rights to State coercion and allow them to be converted into regulated "privileges".

The North Carolina Court of Appeals explains this right away by sleight-of-hand in its opinion below:

> "However, the right to travel is not synonymous with the right to operate a motor vehicle on the highways of this State. The operation of a motor vehicle on such highways is not a natural right. It is a conditional privilege, which may be suspended or revoked under the police power. The license or permit to so operate is not a contract or property right in a constitutional sense.'" *Honeycutt v. Scheidt*, 254 N.C. 607, 609-10, 119 S.E.2d 777, 780 (1961) (internal quotations and citations omitted). (Appendix A at p. A-5).

This excerpt from the finding of the North Carolina Supreme Court was carefully crafted by the Court of Appeals to take the quote out of context. The complete quote, as posted in the NC "Uniform Driver's License Act" at p. 81 under Section 20-16, and as shown at App. E, states precisely:

> "The right of a citizen to travel upon the public highways is a common right, but the exercise of that right may be regulated or controlled in the interest of public safety under the police power of the State. The operation of a motor vehicle on such highways is not a natural right. It is a conditional privilege, which may be suspended or revoked under the police power. The license or permit to so operate

> is not a contract or property right in a constitutional sense." *Honeycutt v. Scheidt,* 254 N.C. 607, 609-10, 119 S.E.2d 777, 780 (1961), quoting *Commonwealth v. Ellett,* 174 Va. 403, 4 S.E.2d 762, 767.

It is very easy to understand the nuances of the wording of this case cite. It refers with specificity to the "common law" right to "travel" as belonging to a private man as compared to the "conditional privilege" to "operate" on such highways as referring to a business. One who "operates" on the highways is engaged in commerce.

We must first look at the term "operator", one who "operates" and is involved in an "operation". Today we assume that a "traveler" is a "driver," and a "driver" is an "operator." However, this is not the case.

> "It will be observed from the language of the ordinance that a distinction is to be drawn between the terms `operator' and `driver'; the `operator' of the service car being the person who is licensed to have the car on the streets in the business of carrying passengers for hire; while the `driver' is the one who actually drives the car." *Newbill vs. Union Indemnity Co.*, 60 SE.2d 658.

To further clarify the definition of an "operator" the court observed that this was a vehicle "for hire" and that it was in the business of carrying passengers. This definition would seem to describe a person who is using the road as a place of business, or in other words, a person engaged in the "privilege" of using the road for gain. Therefore:

1. Traveling upon and transporting one's property upon the public roads as a matter of Right meets the definition of a traveler.

2. Using the road as a place of business as a matter of privilege meets the definition of an operator or both operator and driver.

"The word `automobile' connotes a pleasure vehicle designed for the transportation of persons on highways." *American Mutual Liability Ins. Co., vs. Chaput*, 60 A.2d 118, 120; 95 NH 200.

The distinction between the two is made clear by the court: "A motor vehicle or automobile for hire is a motor vehicle, other than an automobile stage, used for the transportation of persons for which remuneration is received." *International Motor Transit Co. vs. Seattle*, 251 P. 120.

"The term `motor vehicle' is different and broader than the word `automobile.'" *City of*

Dayton vs. DeBrosse, 23 NE.2d 647, 650; 62 Ohio App. 232. The distinction is made very clear in Title 18 USC 31: "'Motor vehicle' means every description or other contrivance propelled or drawn by mechanical power and used for commercial purposes on the highways in the transportation of passengers, or passengers and property."

Clearly, an automobile is private property used for private purposes, while a motor vehicle is a machine which may be used upon the highways for trade, commerce, or hire.

The North Carolina Court of Appeals spoke correctly in its quote of *Honeycutt v. Scheidt, supra*, "However, the right to travel is not synonymous with the right to operate a motor vehicle on the highways of this State." The "right to travel" in one's private automobile is a part of liberty exercised by a free person and is not to be regulated but for a "compelling State interest". By contrast, the "right to operate a motor vehicle" in a business for hire "is a conditional privilege, which may be suspended or revoked under the police power." *Honeycutt, supra.* (See App. E at p. 3).

The Supreme Court of North Carolina was careful to make it very clear that "Honeycutt"

was "driving" a "motor vehicle" at the time he was arrested, "The record on appeal does not expressly state that the petitioner was driving a truck each time he was arrested for speeding 60 miles per hour in a 50 miles per hour zone, but we so construe the record." *Honeycutt, supra.* Had he been "traveling" in a "private automobile" on his own private business, his constitutional liberty would have forced an entirely different ruling, except that our right to liberty has been "cunningly coerced" away from us.

Having said these things, let's look specifically at the two burdensome statutes under which I was charged: NCGS 20-313, "Proof of Financial Responsibility" (APPENDIX C), *et. seq.*, and 20-111.1, "Vehicle Registration" (APPENDIX D). We must first recognize that "The Highway Safety Act of 1966" (HSA) (P.L. 89-564, 80 Stat. 731), required all acts by the states in this field, via the MUTCD and Uniform Vehicle Code, to be fact based and uniformly applied. Federal Supremacy in this entire field became unassailable when Congress invoked its Commerce Clause authority in HSA, with an expressed emphasis on "roadway safety", to "regulate the use of the channels of interstate commerce" and "to regulate and protect the instrumentalities of interstate commerce *United States v. Lopez*, 514 U.S. 549, 558 (1995), thereby directly, by implication or *de facto* affect, *Fidelity Federal Sav. & Loan Assn. V. De La*

Cuesta, 458 U.S. 141, they encompassed all modalities, means, and instrumentalities. All traffic control and the exercise of police power thereof within a right of way open to public travel within the U.S., its Territories and Protectorates from 1966 hence, became a federally regulated field; and the regulation thereof shall be subordinate, fact based, uniform and in substantial conformance within the bounds of federal law and the U.S. Constitution, *et al.*

Hence, since 1966 Congress and federal regulatory agencies cannot recede superior authority back to the States if it impinges on an inalienable or federal due process right *Melendez-Diaz V. Massachusetts* (No. 07-591, 2009) or Constitutional authority et al; including the unalienable rights of Life, Liberty and the pursuit of Happiness, Substantive and Procedural due process, Equal Protection, Supremacy, Commerce, Confrontation Clause(s), habeas corpus, 1st, 4th, 5th, 6th, 9th, and 14th Amendments, *et al.* Nor can a federal or State agency under color of federal law or inferior state laws and jurisprudence, as in this instance, rely on any purported authority that in any manner impinges on my Constitutional Rights. The right to travel is "unalienable", and "unalienable rights" are NOT "federal". They are Natural (Dec. of Independence); and they are not abridgeable without full constitutional

protections, including search and seizure; and all rights are preserved and are superior to state law for any acts within the domain of an instrument of or facility open to travel within the US and its Territories.

Nor can a federal agency in any manner through administrative convenience adopt a regulation or through nonfeasance permit under the color of federal law inferior authorities to deny these rights; and within the USDOT's statutory oversight authority they have remedy to reign in non-conforming practices. 5 USC 706 gives parties with standing authority to compel compliance; separately, individuals retain all Constitutional rights and remedies to plead not guilty when charged with an unconstitutional act or law, *et al.*

In its simplest terms, when a State mandates automobile insurance and vehicle registrations, it places an unnecessary and unconstitutional burden on the right of liberty and exceeds its authority under the "police power" of the 10th Amendment. As stated, *supra*, these laws must be uniform throughout the land.

> "No State government entity has the power to allow or deny passage on the highways, byways, nor waterways...[one] transporting his vehicles and personal property for either recreation or business, but by being subject only to local regulation

> i.e., safety, caution, traffic lights, speed limits, etc. Travel is not a privilege requiring, licensing, vehicle registration, or **forced insurances**." *Chicago Coach Co. v. City of Chicago* 337 Ill. 200, 169 N.E. 22 (Emphasis mine).

This opinion does not mean that the State may not accept voluntary compliance with its mandates, but it does mean that one may "opt out" of the mandate by refusing to contract with the State and by acting responsibly with personal accountability, thus waiving his right to contract his rights away. North Carolina case law clearly provides that I have no duty to provide evidence of insurance unless I am first involved in an accident causing bodily injury, death or damage to another vehicle in excess of $1,000.00:

> "It is only after an accident that one must furnish proof of financial responsibility or secure a liability policy to cover accidents in the future." *Barkley v. International Mutual Insurance Company*, 227 SC 38, 86 S.E.2d 602 (1955); The statute does not impose its requirements as to proof of financial responsibility until the occurrence of certain accidents, ..." *Royse v. Boldt*, 491 P.2d 644 (Dec. 9, 1971)

Further, absent a search warrant the State of North Carolina cannot impair the obligation of my insurance contract between me and my insurance company (Article 1, Section 10, cl. 1):

> "The existence of an insurance policy is a matter of contract law, since insurance involves a contractual relationship between the insurer and the insured." *LaPoint v. Richards*, 66 Wn. (2d) 585 at 588 (July 8, 1965); "Traditionally, insurance contracts have been considered to be private contracts between the parties." *Mutual of Enumclaw v. Wiscomb*, 611 P.2d 1304 (April 14, 1980).

Thus, my failure to provide proof of insurance is a federally protected right under the 5th and 14th Amendments to the Constitution.

One of the reasons for the adoption of mandated liability insurance legislation is the high risk allegedly caused by the uninsured, the size of which I estimate to be, for purposes of this legal argument, about 5% of the State population. This also means that the rest of our population, the other 95%, pose no problem in this respect. But to solve this problem caused by the 5%, the legislature passed a law to affect 100% of the people who could fall within the

classification of being "lawful subjects of State legislation".

Via the 14th Amendment, the States are prohibited from denying equal protection in their legislative enactments. Similarly, there is an "equal protection component" embodied within the Due Process Clause of the 5th Amendment. See *Bolling v Sharpe*, 347 U.S. 497, 499, 74 S.Ct. 693 (1954), *et al.* Consequently, equal protection principles apply to both the State and federal governments.

Principles of equal protection deal with legislative reasons for creating categories where a law applies to one class but not another. Dozens of examples of how the principles of equal protection operate can be found in the courts' records. They fall into two categories: "under-inclusive" and "over-inclusive".

If a legislative body attempts to address via legislation a particular problem, it must focus on the class creating that problem. If in doing so, the legislative body encompasses less people than necessary to address that problem, an "under-inclusive" classification is created; if more, then an "over-inclusive" class is created. Either case violates equal protection.

A sample of cases which are examples of "under-inclusive" classifications for equal protection analysis: .A commercial fishing law that applied to one group of fishermen but not

another was found violative of equal protection in *Isakson v. Rickey*, 550 P.2d 359 (Alaska 1976); in *French v. Amalgamated Local Union 376*, 203 Conn. 624, 526 A.2d 861 (1987), a ban on residential picketing except for unions was held to violate equal protection.

By contrast, *Brown v. Merlo,* 8 Cal.3d 855, 506 P.2d 212, 227 (1973) (statute was over-inclusive because it "imposes a burden upon a wider range of individuals than are included in the class of those tainted with the mischief at which the law aims.").

An under-inclusive classification exists when all persons in the class are indeed perpetrators of the mischief or evil the state wishes to eliminate, but others who possess the same undesirable trait remain outside the class. An over-inclusive classification burdens a wider than necessary range of individuals, extending beyond those persons possessing the trait contributing to the mischief or evil the legislature seeks to eradicate.

In reference to the phony "Proof of Financial Responsibility" law, the problem is caused by that part of our population that is uninsured or who might tend to be scofflaws when it comes to restitution, but not the rest of us. This law is over-inclusive in that the problem State seeks to address involves the uninsured, not insured, but this law applies to all "lawful subjects", including the insured. Including everybody else beyond the uninsured violates

principles of equal protection by creating an overbroad classification and is unconstitutional.

In its opinion, the North Carolina Court of Appeals states a compelling State interest justifying violation of equal protection and due process (App. A, p. 8). This is only an excuse, not a reason.

It's really all about money, revenue. Just "follow the money". Upon information and belief, the State investment fund is heavily dependent upon dividends from its insurance portfolios to insure positive cash flow. How better to "insure" profitability than to make it law that everyone has to have insurance? NCGS 20-313 is actually a hidden tax with alleged humanitarian overtones; but it's still a tax. It's unconstitutional.

Think about it. Where there is no "rendering for taxation", or in the vernacular, "listing for taxes", there is no taxation. (My untitled vehicles are not taxed.) But the legislature has invented a law to require registration of "motor vehicles" and "cunningly coerced" us that it is our duty so to do. Once that private property automobile is registered, it is "rendered for tax", and a whole litany of other statutes designed to jurisdictionally enhance the revenues of North Carolina take affect: mandated insurance; inspections; seat belts (federal funding); license

plates; titles; etc. Then there is the wealth of revenue generated in traffic court for lawyers, the judicial system, law enforcement and "education". Our reward is, we get to be sources of revenue – SLAVES!

NCGS 20-279.18, short title, "Alternate methods of giving proof" (App. D), makes no exceptions no matter how much money one may have in the bank. This Court is not asked to sit as a super-legislature to determine the wisdom, need, and propriety of such laws that touch economic problems, business affairs, or social conditions. However it is asked to intervene in this instance because this law operates directly on a fundamental right to the property interest of an individual, possibly a large class of individuals, to determine the best use of his property by denying him the right to be self-insured because he does not have registered with the state 25 vehicles, no matter how much cash money in his bank account. NCGS 20-279.18 provides three alternatives as "proof of financial responsibility" (App. D). But, insurance and money are property; and the 14th Amendment restricts the States from depriving citizens of the United States of their "life, liberty or property without due process of law".

This Court has defined property interest thusly: "Whether a property interest exists must be determined by reference to state law." *Bishop*

v. Wood, 426 U.S. 341, 344, 96 S.Ct. 2074, 2077 (1976), *et al* ("The hallmark of property ... is an individual entitlement grounded in state law, which cannot be removed except 'for cause.'")

Two things are settled by statute, and they are the facts that money or money deposited in a bank and insurance are property. One having either has private property. Pursuant to NCGS 116B-52 – "Definitions:

> (11) "'Property' means tangible personal property physically located within this State or a fixed and certain interest in intangible property that is held, issued, or owed in the course of a holder's business, or by a government, governmental subdivision, agency, or instrumentality, and all income or increments therefrom. The term includes property that is referred to as, or evidenced by:
>
> a. Money, a check, draft, deposit, interest, or dividend; ... including policies providing life insurance, property and casualty insurance, workers' compensation insurance, or health and disability insurance;..."

Moreover, it is also settled that making one possess insurance or any other property so that they may enjoy a federal right is beyond the power of any state. As this Court stated:

> "Property can have no more dangerous, even if unwitting, enemy than one who would make its possession a pretext for unequal or exclusive civil rights. Where those rights are derived from national citizenship, no state may impose such a test, ..." *Edwards V. California*, 314 U. S. 160 (1941)

58 years later this Court also restricted Congress' power so to do in *Saenz V. Roe*, *supra*.

With these decisions in mind it is apparent that no state, North Carolina notwithstanding, nor Congress for that matter, has the constitutional authority to require its citizens or anyone who travels upon its highways to possess proof of financial responsibility in order to enjoy their federally recognized unalienable right to move throughout that state.

The State has asserted that its compelling interests are potentially the huge losses that could result to the state and moreover to its individual citizens if uninsured motorist are free to travel its highways unmolested or unrestrained, arguing that the damage to the public welfare, especially finance, the proportions of which are staggering, will become a great peril.

But as the court stated to similar arguments made by different states in other cases:

> "It is not for us to say that this is not true. We have repeatedly and recently affirmed, and we now reaffirm, that we do not conceive it our function to pass upon "the wisdom, need, or appropriateness" of the legislative efforts of the States to solve such difficulties. *See Olsen v. Nebraska,* 313 U. S. 236, 313 U. S. 246.

But this does not mean that there are no boundaries to the permissible area of State legislative activity. There are. And none is more certain than the prohibition against attempts on the part of any single State to isolate itself from difficulties common to all of them by restraining the transportation of persons and property across its borders. ... But, in the words of Mr. Justice Cardozo:

> "The Constitution was framed under the dominion of a political philosophy less parochial in range. It was framed upon the theory that the peoples of the several States must sink or swim together, and that, in the long run, prosperity and salvation are in union, and not division." *Baldwin v. Seelig,* 294 U. S. 511, 294 U. S. 523.

Not even the State's compelling interest outweighs the interest of the people to be able to

move about freely unencumbered with this burden because, as the Court has stated:

> "But to allow such an exception to be engrafted on the rights of *national* citizenship would be to contravene every conception of national unity. It would also introduce a caste system utterly incompatible with the spirit of our system of government... It might thus withhold from large segments of our people that mobility which is basic to any guarantee of freedom of opportunity. The result would be a substantial dilution of the rights of *national* citizenship, a serious impairment of the principles of equality. Since the state statute here challenged involves such consequences, it runs afoul of the privileges and immunities clause of the 14th Amendment. *Edwards V. California, supra.*

However if the state prevails in its argument that it meets the compelling interest test to compel or require travelers to show proof of financial responsibility, it cannot meet the requirements imposed upon the States pursuant to the Equal Protection Clause of the 14th Amendment because it places individuals who have less than 25 vehicles registered in their names in a classification that has the effect of imposing a penalty on their exercise of the right to travel.

As this Court stated:

> "In *Shapiro*...We further held that a classification that had the effect of imposing a penalty on the exercise of the right to travel violated the Equal Protection Clause "unless shown to be necessary to promote a *compelling* governmental interest," *id.,* at 634, "and that no such showing had been made." (Cited in *Saenz v. Roe*, 526 U. S. 489 (1999))

NCGS 20-279.18 does not allow me or any one in my class to become self-insured; but it allows a person who conceivably has less money in his bank account to become classified as self-insured, not because of his true financial status that is measured in cash liquidity, but because he is in a class of persons who have demonstrated the ability to have 25 vehicles registered in his name. This penalizes all others. With $1, 514, 974.22 in the bank at the time of this incident (See App. A, p. A-2), I could easily purchase from a junk yard 25 vehicles for less than 20 thousand dollars and register them in my name. This would reduce my financial liquidity, but it would satisfy this lunacy of the state. Thus, the "proof of financial responsibility" law is discriminatory, lacking of equal protection, and patently unconstitutional.

As this Court also has stated:

> "If a law has 'no other purpose . . . than to chill the assertion of constitutional rights by penalizing those who choose to exercise them, then it['s] patently unconstitutional." *United States v. Jackson,* 390 U. S. 570, 581 (1968)." *Id.,* at 631.

Moreover, the State of North Carolina "Alternate methods of giving proof" has violated the very spirit of the equal protection clause because it does not recognize that a man with over a million and a half dollars in a bank account is qualified for self-insurance even if he doesn't have more than 25 motor vehicles registered in his name. In this case the statute and enforcement of the statute is arbitrary and capricious.

This law is unconstitutional as well because the state has not relied on factors which the 14th Amendment has commanded the states to consider when making and enforcing its laws. "The reviewing court should not attempt itself to make up for such deficiencies . . ." *State Farm,* 463 U.S. at 43 (quoting *Bowman Transp. Inc. v. Arkansas-Best Freight Sys.*, 419 U.S. 281, 286 (1974)).

In *State Farm,* this Court held that the agency's decision was arbitrary and capricious because the agency had failed to give any consideration to an obvious alternative to meet

the requirements imposed upon it pursuant to the 14th amendment. *Id.* at 46-47. That rationale resonates in this case. Rather than penalize the entire population, only the scofflaws who refuse to make whole those they harm should be punished, and severely (See *Barkley, supra*)..

NCGS 20-279.18 violates the takings clause of the U.S. Constitution contained in the 5th Amendment. It offends the doctrine set forth in *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922). Because of NCGS 20-279.18, police regulation of my (1.5+ million dollars) property's use is so severe that it goes "too far," as Justice Holmes put it in *Pennsylvania Coal Co.*, and deprives me of the property's value, utility and marketability; denying me the benefits of property ownership; thus accomplishing a constitutionally forbidden *de facto* taking without compensation. The lack of "just compensation" in this case is that the police action of the statute constitutes a regulatory taking in that it declares that the value of 1.5 million dollars is not an acceptable alternative proof of financial responsibility. Therefore the statute has literally made this property worthless for the purpose of self-insurance.

This Court has defined the last two words of the amendment promise "just compensation" for takings by the government. In *United States v. 50 Acres of Land*, 469 U.S. 24 (1984), this Court wrote that "The Court has repeatedly held that

just compensation normally is to be measured by 'the market value' of the property at the time of the taking contemporaneously paid in money.' *Olson v. United States, 292 U.S. 246 (1934)* ... Deviation from this measure of just compensation has been required only 'when market value has been too difficult to find, or when its application would result in manifest injustice to owner or public.'" *United States v. Commodities Trading Corp., 339 U.S. 121, 123 (1950).* The market value of my property at the time of the regulatory taking was precise. Because of this regulatory taking of the value of my property, the state should pay me $1,514,974.22, or whatever 25 vehicles and their registration cost are under these precedents, and then declare me as self-insured. Or, alternatively the state could just simply declare me "self-insured".

I have standing under this Court's articulated situations of inverse condemnation: (a) physical seizure or occupation, (b) the reduction of the regulated property's utility or value to such an extent that it is no longer capable of economically viable use, and (3) where as a precondition to the issuance of a permit, the government demands that the regulated owner convey property to the government even though there is no rational nexus between the owner's activity's impact on public resources, and the owner's proposed regulated use, or where the extent of the exaction

is not proportional to the effect of the owner's activities (*Nollan v. California Coastal Commission* 483 U.S. 825 (1987)). The Court held that the regulation was a taking in violation of the 5th and 14th Amendments in *Dolan v. City of Tigard*, 512 U.S. 374 (1994).

I have standing pursuant to the third test. Because, as the precondition to the issuance of a self-insurance status, the government demands that I must have 25 vehicles registered in my name or post a bond to convey property to the government even though there is no rational nexus between the owner's activity's impact on public resources and the owner's proposed regulated use, or where the extent of the exaction is not proportional to the effect of the owner's activities.

Therefore, NCGS 20-313 and 20-279.18 not only fall into the category of "burdens" on the right to travel described in *Shapiro* and *Chicago Coach Co.*, *supra,* but also deny equal protection of the law and are unconstitutional.

It is a matter of record that my automobile was not titled in any State at the time of my seizure by Deputy Malpass. ADA Bowman made that clear at the trial Thus, it was not "rendered" for jurisdiction. It was private property. The NC Supreme Court has maintained,

> "Since a sale of personal property is not required to be evidenced by any written

> instrument in order to be valid, it has been held in North Carolina that there may be a transfer of title to an automobile without complying with the registration statute which requires a transfer and delivery of a certificate of title." N.C. Law Review Vol. 32 page 545, *Carolina Discount Corp. v. Landis Motor Co.* 190 N.C. 157.

It is a matter of record that the State or United States provides me no benefit, pension, healthcare, entitlement or subsistence of any kind. I am not a registered voter. I no longer have a social security number. There is no contract between me and the State or the United States into which I have entered voluntarily of my own free will, with knowledge and informed consent, including my driver's license. I was threatened with jail by the Sheriff of Pender County if I was caught with no license. I also need a license to operate a "motor vehicle", a rental car, for instance. All my property is owned by bill of sale. I did not threaten anyone's rights with my automobile. There is, therefore, no jurisdictional nexus for the State. Further, I have not voluntarily granted any jurisdiction, other than special jurisdiction for appeals, and have waived no rights.

Looking at *Wickard v. Filburn*, 317 US 111, 63 S. Ct 82 (1942),

> "[T]he importance of accepting or anticipating benefits from the State can be

> very costly to one's protected rights We can hardly find a denial of due process in these circumstances, particularly since it is even doubtful that appellee's burdens under the program outweigh his benefits. **It is hardly lack of due process for the Government to regulate that which it subsidizes.**" (Emphasis mine).

Yet, as I stated, *supra*, our ignorance of the law and our rights gets the best of us

> "...because of what appears to be a lawful command on the surface, many citizens, because of their respect for what only appears to be law, are cunningly coerced into waiving their rights due to ignorance. The privilege against self-incrimination is neither accorded to the passive resistant, to the person who is ignorant of his rights, nor to one who is indifferent thereto. It is a fighting clause. Its benefits can be retained only by sustained combat. It cannot be claimed by attorney or solicitor. It is valid only when insisted upon by a belligerent claimant in person." *US v. Mincker*, 350 US 179, p. 187.

So, what grants the State "police power" over my private property automobile to require it be "registered" and tagged with the State when it is being used solely for my own private travel? The

answer is, "There is no such grant." Thus, I do not require State registration on my automobile unless I am using it on the public way for commerce, and the charge against me under NCGS 20-111.1 is unconstitutional. Both NCGS 20-111.1 and NCGS 20-313 appear to be preemptive and over-inclusive rather than being reactive and targeting a specific threat.

In an attempt to thwart this argument of fact, the North Carolina Court of Appeals in its opinion (App. A, p.8) cites *Hendrick v. Maryland*, 235 U.S. 610, 622, 59 L. Ed. 385, 391 (1915), in part, thusly, "State may rightfully prescribe uniform regulations necessary for public safety and order in respect to the **operation** upon its highways of all **motor vehicles**." (Emphasis mine). *Hendrick* is a federal case, and the words must be defined "federally". These highlighted words are extremely important in the right to travel argument as discussed, *supra*; and the source of much confusion. That discussion clearly defines the difference between "traveling" and "operating", and between "automobile" and "motor vehicle". In that case, the State is merely exercising its mandate to regulate commerce.

NCGS 20-111, short title, "Violation of registration provisions", states, in part, "It shall be unlawful for any person to commit any of the following acts:

> "(1) To drive a vehicle on a highway, or knowingly permit a vehicle owned by that person to be driven on a highway, when the vehicle is not registered with the Division in accordance with this Article or does not display a current registration plate."

Here, again we see the distinctive word "drive" which puts the burden on the operator for hire, not the private citizen traveling in his private automobile.

Further, the Constitution in the 5th Amendment mandates that no one "be compelled in a criminal case to be a witness against himself". This Court sustains this position with its ruling in *Haynes v. U.S.*, 390 U.S. 85, 88 S.Ct. 722, wherein to force anyone to **register** anything is communicative. and such communicative evidence is precluded by the 5th Amendment. So the statute is unconstitutional on its face as to being obligatory.

This statute also falls into the category of laws described in *Shapiro* and *Chicago Coach Co.*, *supra*, as unconstitutional burdens on the right to travel.

In addition to the valid constitutional arguments against the court's or the statute's having jurisdiction over my right to travel in this matter, *supra*, there is also the issue of there having been shown no willful and voluntary

contractual relationship between me and the State which would grant any jurisdiction whatsoever over my person or my property in this matter, thus requiring me to register my private property.

There can be no doubt that the presence of a contractual relationship is necessary for the corporate State of North Carolina to exercise jurisdiction over me. This fact of law is no better illustrated than by the "CLEARFIELD TRUST DOCTRINE":

> "Governments descend to the level of a mere private corporation, and take on the characteristics of a mere private citizen... [w]here private corporate commercial paper [Federal Reserve Notes] and securities [checks] is concerned... For purposes of suit, such corporations and individuals are regarded as entities entirely separate from government." *Clearfield Trust Co. v. United States*, 318 U.S. 363-371 (1942).

In other words, when private commercial paper is used by corporate government, then Government loses its sovereignty status. As such, government then becomes bound by the rules

and laws that govern private citizens which means that if they intend to compel an individual to some specific performance based upon its corporate statutes or corporation rules, such as vehicle registration or liability insurance, then the government, like any private citizen, must be the *holder in due course* of a contract or other commercial agreement between it and the one upon whom demands for specific performance are made. The government must be willing to enter the contract or commercial agreement into evidence before trying to get to the court to enforce its demands, called statutes.

At all times relevant to this instant matter, I had not knowingly or voluntarily with full disclosure availed myself of any benefit from NC which would place me under the jurisdiction of the State's statutes noted; and there was no injured party. As shown by the record and this brief, I have steadfastly and repeatedly denied jurisdiction and objected to the jurisdiction of the lower court and granted mere "special" jurisdiction to courts of appeal to hear my appeal. Therefore, no jurisdiction has been granted to the lower court; nor has the lower court proven any such authority over me.

Unless an entity has become a part of the corporation (State of North Carolina) by voluntarily of his own free will accepting a license (contract) and being subject to it, no

corporate policy (statute) has any authority against that entity, saving actions of that entity against the sacred rights of others so possessed. The State of North Carolina had no contractual basis for jurisdiction over me, and the record shows that none was produced during the trial.

If one has not voluntarily of his own free will "availed" himself of any benefit from, or is not in, or of, any office of government and, in other words, subject to the administrative laws of said corporate government, then he is a private citizen and a part of the private sector, not under statutory jurisdiction. At all times relevant to my arrest, I was a "private" citizen and not a "corporate" citizen under jurisdiction (See *Hale v. Henkel*, 201 US 43, at R. p. 27).

It is a matter of record that my automobile was not titled in any State at the time of my seizure by Deputy Malpass. ADA Bowman made that clear at the trial. It was private property. All my property is owned by bill of sale. I did not threaten anyone's rights with my automobile. There is, therefore, no jurisdictional nexus for the State. I have waived no rights.

Therefore, this instant matter begs the question of, "Where did the court get its jurisdiction over me and my property?" The answer is, of course, that it was merely assumed, but not proven. Is it no longer necessary to prove jurisdiction, or do we live in a system of judicial

tyranny where "The law is what we say it is"? I think not.

I demanded the court prove jurisdiction. It refused. I objected. It didn't hear me. Jurisdiction, once challenged by a party, must be proven; it cannot be assumed. Title 5 USC §556(d) states, "When jurisdiction is challenged the burden of proof is on the government." This position is supported by "[n]o sanction can be imposed absent proof of jurisdiction." *Stanard v. Olesen*, 74 S. Ct. 768; and, "Once challenged, jurisdiction cannot be 'assumed', it must be proved to exist." *Stuck v. Medical Examiners,* 94 Ca2d 751, 211 P2S 389, *et al.*

The argument, although not made by the State but implied, that merely being a resident of the State grants jurisdiction, has been reviewed by this Court many times. To wit:

> "The averment of jurisdiction of the United States courts must be positive, and the declaration must expressly state the fact on which such jurisdiction depends; and, where the jurisdiction depends on the diverse citizenship of the parties, an allegation that defendant is "a citizen or a resident" of a certain state is insufficient to confer jurisdiction, since, consistently with such averments, he may be either." *Browne v. Keene*, 33 US 112 (1834). (This

> cite has been used successfully at least 100 times and failed only once, and the statute under review then was superceded. (See *Singh v. Daimler-Benz* AG, 9 F.3d 303.)

So, what gives? Must jurisdiction be proven by the State in the absence of its being granted by the defendant, or not?

Where a contractual relationship exists between the State and the individual, there also lays jurisdiction, although limited based upon the terms. However, where no contract exists, there is no jurisdiction. "Party cannot be bound by contract that he has not made or authorized." *Alexander v. Bosworth* (1915), 26 C.A. 589, 599, 147 P.607. Therefore: "Failure to reveal the material facts of a license or any agreement is immediate grounds for estoppel." *Lo Bue v. Porazzo* 48 Cal.App.2d 82, 119, p.2d 346, 348. The theory of fraudulently "presumed" quasi-contracts that allegedly bind us with STATE agency is void for fraud *ab initio*, since the *de facto* State cannot produce the material fact (consideration inducement) or the jurisdictional clause (who is subject to said statute). (SEE: Master/Servant [Employee] Relationship -- C.J.S. - " Private, Liberty").

Since "consideration" is the "life blood" of any agreement or quasi agreement, (contract) ". . .

absence of such from the record is a major manifestation of want of jurisdiction since without evidence of consideration there can be no presumption of even a quasi-contractus. Such is the importance of a "consideration." *Reading R.R. Co. v. Johnson,*7 W & S (Pa.) 317. So without valid, voluntary fully informed, willing participation in a agreement/contract (recording of the M.S.O., or "Certificate of Title") or consideration, there is no DMV/government, etc,. jurisdiction as the property does not "reside" in the colorable fictitious territory occupied by State authority. There is a right to contract and a right not to contract. I have chosen not to contract with the State. There is no jurisdiction granted. The State's actions against me to force me to insure and register my private property automobile are unconstitutional.

Finally, I must ask this Court whether or not, the courts below acted in violation of my right to counsel of choice when I was denied access to a lay person, not a licensed attorney, chosen by me as "Next Friend", to assist and counsel me at the "defendant's table" during my trial in Superior Court during the month of February, 2009.

This Court has ruled in *Argersigner v. Hamlin, Sheriff* 407 U.S. 425 (1972) that litigants must be assisted by counsel during judicial proceedings, unless they waive that

right. Mr. Justice Douglas, held that, absent knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor or felony, unless he was represented by counsel at his trial, thus, denying entirely jurisdiction of the court over that person if he was not allowed counsel of his choice.

Further, the failure of the State, judge or prosecutor to recognize the right to counsel denies the court any jurisdiction to hear the matter. (See *Johnson v. Zerbst*, 304 U.S. 458, 462-463).

The North Carolina Court of Appeals affirmed the lower court's denial of counsel of choice thusly: "The assertion of a 'right' to be represented by a nonattorney has previously been rejected by this Court. *State v. Phillips,* 152 N.C. App. 679, 683, 568 S.E.2d 300, 303 (2002). This assignment of error is overruled."

There are a litany of rulings from other States as well as federal rulings by the courts which support the right to counsel and the right to counsel of choice, be he layperson or not. A few samples follow:

> *Sims v. Aherns*, 271 S.W. 720 (1925) - "The practice of law is an occupation of common right."
>
> *Chandler v. Frietag*, 348 US 3 – "An accused must be allowed to employ counsel

of his own choosing, and he must be given a reasonable opportunity to do so...his right to be heard through his own counsel is *unqualified.*" (Emphasis mine)

US v. Tarlowski, 305 F.Supp. 112, 1969 – "For a government official to mouth in a ritualistic way part of the warning about the right to counsel, while excluding the person relied upon as counsel is, in effect, to reverse the meaning of the words used."

Commissioner of Corrections, et al, 393 US 483, 490 – "In reversing the District Court, the Court of Appeals relied on the power of the State to restrict the practice of law to licensed attorneys as a source of authority for the prison regulation. The power of the States to control the practice of law cannot be exercised so as to abrogate federally protected rights."

Brotherhood of Railroad Trainmen v. Virginia ex rel. Virginia State Bar, 377 US 1,6 – "Virginia undoubtedly has broad powers to regulate the practice of law within its borders, but we have had occasion in the past to recognize that, in regulating the practice of law, a State cannot ignore the rights of individuals secured by the Constitution. For as we said in *NAACP v. Button*, 371 US at 429, 'a State cannot foreclose the exercise of constitutional rights by mere labels."

Thus, regardless of North Carolina's statutes, habits, culture or any arbitrary rulemaking by a judge, my 6th Amendment right to counsel of choice cannot be invalidated. The State's pretended right to regulate the practice of law must fall or recede when put alongside my right to counsel of choice, be he "licensed" or not. I have a right to be foolish or wise when it comes to my own defense. It's called freedom of choice. Anything else is the result of prejudicial action by the courts below to enhance the legal "profession" and its ill-gotten gains.

REASONS FOR GRANTING THE PETITION

In the interest of revenue enhancement, North Carolina law enforcement and the courts below have failed to recognize my right to travel, a part of liberty sustained repeatedly by this Supreme Court. Because there exists a constitutional question of great interest and benefit to the People at large in all the several united States and the Territories, it is incumbent upon this Supreme Court to exercise its review authority to, once and for all, settle this long-running dispute, clearly and precisely, such that there can be no further argument.

The District and Superior Courts for the Fifth District of North Carolina, the North Carolina Court of Appeals, and the North Carolina

Supreme Court have erroneously convicted me, or denied my appeal of said convictions, of statutory violations which unconstitutionally burden and restrict the exercise of my right to travel, a part of the right to liberty, thereby having denied me my federally protected constitutional and civil rights.

The North Carolina Court of Appeals (hearing denied by the State Supreme Court), has decided the burning question of my right to travel/liberty in a way that is in conflict with numbers of relevant decisions by state courts of last resort, the United State District Courts, the United States Courts of Appeals and this Supreme Court that appear to have settled the matter, but are being ignored by the courts below.

CONCLUSION

I, Donald Sullivan, come before this Honorable Court claiming all the rights to which I am entitled as a natural man, created by God, and claiming all those civil rights guaranteed by the Constitution to citizens of the United States, seeking redress of those grievances outlined herein. This is my right under the 1st Article of Amendment to said Constitution. Wherefore, I petition the following:

Whereas, the right to travel is an inherent part of the right to liberty belonging to all citizens of the United States as guaranteed in

the 5th and 14th Articles of Amendment to the Constitution;

Whereas, NCGS 20-111.1, NCGS 20-313 and NCGS 20-279.18 have been shown to be in violation of the 5th and 14th Articles of Amendment and unconstitutional;

Whereas, no jurisdiction has been proven over me by the courts below; and,

Whereas, the right to counsel of the 6th Amendment is unqualified;

Therefore, the merits of my case should be reviewed by this Court; the ruling of the courts below should be reversed; the criminal charges against me should be dismissed; and the Petition for a writ of certiorari should be granted.

Respectfully re-submitted this the 2nd day of November, 2010, by:

Donald Sullivan, Petitioner, Sui Juris
Lt. Colonel USAFR(R)
c/o General Post
Atkinson, NC [28421]
WITHOUT PREJUDICE [UCC1-308]

APPENDIX A

NO. COA09-705
NORTH CAROLINA COURT OF APPEALS
Filed: 22 December 2009
STATE OF NORTH CAROLINA

v.

Pender County
No. 08 CRS 1482
JAMES DONALD SULLIVAN

Appeal by defendant from judgment entered 25 February 2009

By Judge Jay D. Hockenbury in Pender County Superior Court.

Heard in the Court of Appeals 17 November 2009.

Attorney General Roy Cooper, by Special Deputy Attorney General Robert C. Montgomery, for the State.

Donald Sullivan, pro se, for defendant-appellant.

CALABRIA, Judge.

Donald Sullivan ("defendant") appeals a judgment entered upon a jury verdict finding him guilty of operating a motor vehicle on a street or highway without the vehicle being registered with the North Carolina Department of Motor Vehicles ("NCDMV") and operating a motor vehicle on a street or highway without having in full force and effect the financial responsibility required by N.C. Gen. Stat. § 20-313 (2007). We find no error.

I. Background

On 2 June 2008, Deputy Kevin Malpass ("Deputy Malpass") of the Pender County Sheriff's Department initiated a traffic stop of defendant's vehicle because a valid registration plate was not displayed. As Deputy Malpass attempted to explain to defendant the reason he initiated the traffic stop, defendant pulled out a folder and attempted to convince Deputy Malpass that his constitutional rights would be violated if Deputy Malpass issued him a citation. Defendant stated that he had no insurance for the vehicle he was driving, but he showed Deputy Malpass a bank statement which indicated defendant had $1,514,974.22 in his bank account. Defendant also attempted to convince Deputy Malpass that Sheriff Carson Smith had given defendant permission to travel in Pender County without a valid registration plate.

After checking with his superiors, Deputy Malpass issued defendant a citation for (1) operating a motor vehicle on a street or highway without a proper registration with the NCDMV and (2) operating a motor vehicle on a street or highway without having in full force and effect the financial responsibility required by N.C. Gen. Stat. § 20-313 (2007). On 23 September 2008, after a bench trial, defendant was convicted of both offenses in Pender County District Court. Defendant appealed his conviction to the superior court.

Defendant was tried *de novo* beginning on 24 February 2009 in Pender County Superior Court. On 25 February 2009, the jury returned verdicts of guilty to both of the charges.

Defendant was sentenced to forty-five days in the North Carolina Department of Correction. That sentence was suspended and defendant was placed on unsupervised probation for twelve months on the condition that defendant pay a $750 fine and $259.50 in court costs. Defendant was also ordered, as special conditions of his probation, to (1) not violate the laws of any state or the federal government; and (2) not operate his vehicle until it was properly registered and had proper financial responsibility. Defendant appeals.

II. Rules of Appellate Procedure

As an initial matter, we note that defendant has failed to comply with a number of our appellate rules. Defendant's statement of the facts includes argumentative assertions in violation of N.C.R. App. P. 28(b)(5). Additionally, for each of his questions presented, plaintiff has failed to state the appropriate standard of review or cite to specific assignments of error or record pages, in violation of N.C.R. App. P. 28(b)(6). Defendant has previously been reminded to follow the appellate rules, particularly N.C.R. App. P. 28(b). *Sullivan v. Pender County*, ___ N.C. App. ___, ___, 676 S.E.2d 69, 71 (2009). While we will consider defendant's arguments because "only in the most egregious instances of nonjurisdictional default will dismissal of [an] appeal be appropriate," *Dogwood Dev. & Mgmt. Co., LLC v. White Oak Transp. Co.*, 362 N.C. 191, 200, 657 S.E.2d 361, 366 (2008), we again remind defendant that these rules are mandatory and caution him that his continued failure to adhere to these rules subjects him to possible sanctions, including dismissal of his appeal.

III. Jurisdictional Arguments

Defendant argues that the trial court erred by exercising jurisdiction over him. While it is difficult to discern the exact substance of

defendant's argument, it appears that, essentially, defendant argues that (1) N.C. Gen. Stat. §§ 20-111(1) & 20-313 (2007) are unconstitutional; (2) the trial court lacked jurisdiction because defendant has no contractual relationship with the State; (3) only federal jurisdiction exists because the

State is a party to the instant case; and (4) the trial court lacked jurisdiction because the State of North Carolina cannot prove its lawful creation after the Civil War. We disagree.

A. Constitutionality of N.C. Gen. Stat. §§ 20-111(1) & 20-313

In challenging the constitutionality of a statute, the burden of proof is on the challenger, and the statute must be upheld unless its unconstitutionality clearly, positively, and unmistakably appears beyond a reasonable doubt or it cannot be upheld on any reasonable ground. When examining constitutional propriety of legislation, [w]e presume that the statutes are constitutional, and resolve all doubts in favor of their constitutionality.
State v. Mello, ___ N.C. App. ___, ___, ___ S.E.2d ___, ___(2009)(internal quotations and citations omitted).

Defendant argues that N.C. Gen. Stat. §§ 20-111(1), which makes it unlawful "[t]o drive a

vehicle on a highway, or knowingly permit a vehicle owned by that person to be driven on a highway, when the vehicle is not registered" & 20-313, which forbids operating a motor vehicle "without having in full force and effect the financial responsibility required" are invalid regulations that infringe upon his right to travel.

[T]he right to travel upon the public streets of a city is a part of every individual's liberty, protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution and by the Law of the Land Clause, Article I, § 17, of the Constitution of North Carolina. The familiar traffic light is, however, an ever present reminder that this segment of liberty is not absolute. It may be regulated, as to the time and manner of its exercise, when reasonably deemed necessary to the public safety, by laws reasonably adapted to the attainment of that objective.
State v. Dobbins, 277 N.C. 484, 497, 178 S.E.2d 449, 456 (1971).

However, the right to travel is not synonymous with the right to operate a motor vehicle on the highways of this State. "The operation of a motor vehicle on such highways is not a natural right. It is a conditional privilege, which may be suspended or revoked under the police power. The license or permit to so operate

is not a contract or property right in a constitutional sense." *Honeycutt v. Scheidt*, 254 N.C. 607, 609-10, 119 S.E.2d 777, 780 (1961)(internal quotations and citations omitted).

The Tenth Amendment to the Constitution of the United States provides, "The powers not delegated to the United States by the Constitution nor prohibited by it to the States are reserved for the States respectively or to the people." Within this reservation of powers to the individual states, is what has been judicially termed "the police power."

State v. Whitaker, 228 N.C. 352, 359, 45 S.E.2d 860, 865 (1947).

[A] State may rightfully prescribe uniform regulations necessary for public safety and order in respect to the operation upon its highways of all motor vehicles. . . . And to this end it may require the registration of such vehicles and the licensing of their drivers. . . . This is but an exercise of the police power uniformly recognized as belonging to the States and essential to the preservation of the health, safety and comfort of their citizens[.]
Hendrick v. Maryland, 235 U.S. 610, 622, 59 L. Ed. 385, 391 (1915).

Defendant's contention that vehicle

registration and financial responsibility requirements are not valid exercises of this State's police power because they do not bear any relationship to public safety is meritless. There are ample public safety justifications for both requirements.

"The reason assigned for the necessity of registration and licensing is that the vehicle should be readily identified in order to debar operators from violating the law and the rights of others, and to enforce the laws regulating the speed, and to hold the operator responsible in cases of accident. The Legislatures have deemed that the best method of identification, both as to the vehicle and the owner or operator, is by a number or a tag conspicuously attached to the vehicle. In case of any violation of law this furnishes means of identification, for, from the number, the name of the owner may be readily ascertained and through him the operator. Such acts. . .have for their object the protection of the public."
Parke v. Franciscus, 228 P. 435, 439 (Cal. 1924)(quotation and citation omitted).

Similarly, the purpose of financial responsibility requirements "is to protect the public on the highways against the operation of motor vehicles by reckless and irresponsible persons, a duty which is inherent in every sovereign government and is a proper exercise of

police power." *Doyle v. Kahl*, 46 N.W.2d 52, 55 (Iowa 1951)(citations omitted).

We hold that N.C. Gen. Stat. §§ 20-111(1) & 20-313 "bear[] a real and substantial relationship to public safety. The General Assembly, therefore, had ample authority, under its police power, to enact the section[s] of the statute here challenged and to make [their] violation a criminal offense." *State v. Anderson*, 275 N.C. 168, 171, 166 S.E.2d 49, 51 (1969). If defendant does not wish to follow these statutory requirements, we remind him that he may exercise his right to travel in a variety of other ways. "If he wishes, he may walk, ride a bicycle or horse, or travel as a passenger in an automobile, bus, airplane or helicopter. He cannot, however, operate a motor vehicle on the public highways. . . ." *State v. Davis*, 745 S.W.2d 249, 253 (Mo. Ct. App. 1988). This assignment of error is overruled.

B. The State as a Party

Defendant argues that the trial court lacked jurisdiction because the State is a party in the instant case. Defendant contends that U.S. Const. art. III requires that any case in which the State is a party, including criminal proceedings, must be brought in federal court. This Court has previously rejected this argument. *See State v. Phillips*, 149 N.C. App. 310, 315, 560 S.E.2d 852, 855 (2002)("Article III,

Section 2, Clause 1 does not confer jurisdiction over criminal matters brought by a state against its own citizen for a crime occurring in that state."); *see also Georgia v. Pennsylvania R. Co.*, 324 U.S. 439, 446, 89 L. Ed. 1051, 1056 (1945)("The original jurisdiction is confined to civil suits where damage has been inflicted or is threatened, not to the enforcement of penal statutes of a State."). This assignment of error is overruled.

C. Remaining Jurisdictional Arguments

In his remaining jurisdictional claims, defendant fails to cite any legal authority that supports his arguments that the trial court lacked jurisdiction because defendant has no contractual relationship with the State and because the State of North Carolina cannot prove its lawful creation after the Civil War. While defendant purports to have added "authority" to these arguments in his Reply Brief, these additional arguments do not actually contain any legal authority. Consistent with our appellate rules,"[defendant]'s patently frivolous assertions raised on appeal in a rambling narrative, unsupported by any authority will not be considered on appeal." *Redden v. State*, 739 P.2d 536, 538 (Okla. Crim. App. 1987); *see also* N.C.R. App. P. 28(b)(6)(2008) ("Assignments of error . . . in support of which no reason or argument is stated or authority cited, will be taken as

abandoned."). These assignments of error are dismissed.

III. [sic] Willfulness

A. Motion to dismiss

Defendant argues that the trial court erred by failing to dismiss the charges against him because the State failed to produce evidence of defendant's willfulness. Defendant made a motion to dismiss at the close of the State's evidence, but failed to renew his motion at the close of all the evidence. Therefore, he has failed to preserve this question for appellate review. *See* N.C.R. App. 10(b)(3) (2008)("[I]f a defendant fails to move to dismiss the action . . . at the close of all the evidence, he may not challenge on appeal the sufficiency of the evidence to prove the crime charged.").

B. Jury instructions

Defendant argues that the trial court erred by failing to use defendant's definition of "willfully" in its instructions to the jury. Defendant contends that the trial court should have instructed the jury that "a willful act is one that is done knowingly and purposely with the direct object of injuring another." We disagree. "It is fundamental that the purpose of the jury charge is to provide clear instructions regarding how the law should be applied to the evidence, in such a manner as to assist the jury in understanding

the case and in reaching a verdict." *State v. Wardrett*, 145 N.C. App. 409, 417, 551 S.E.2d 214, 220 (2001) (citation omitted). "Where the instructions to the jury, taken as a whole, present the law fairly and clearly to the jury, we will not find error even if isolated expressions, standing alone, might be considered erroneous." *State v. Morgan*, 359 N.C. 131, 165, 604 S.E.2d 886, 907 (2004)(citations omitted).

Defendant's proposed definition of a willful act comes from *Hazle v. Southern Pac. Co.*, 173 F. 431, 432 (1909). *Hazle* was a negligence action and the *Hazle* Court was defining willful in the context of a "willful and wanton injury." *Id.* This definition does not apply in a criminal action, such as the instant case.

The other case cited by defendant, *State v. Young,* is also not applicable to the instant case. In *Young,* the defendant, a registered sex offender who had been adjudicated incompetent, was charged with failing to notify the sheriff's department of a change of address. 140 N.C. App. 1, 4, 535 S.E.2d 380, 381 (2000). This Court held that special notification requirements were necessary because of the defendant's incompetence. *Id.* at 11-14, 535 S.E.2d at 386-88. *Young* did not disturb the general rule that "ignorance of the law will not excuse" a defendant who "either knew or should have

known of the possible violation." *Id.* at 11-12, 535 S.E.2d at 386.

In the instant case, the trial court instructed the jury that "[t]he word willfully means something more than an intention to commit the offense. It implies committing the offense purposely and designedly in violation of law." This instruction is consistent with the definition of "willfully" provided by our Supreme Court. *See State v. Stephenson,* 218 N.C. 258, 264, 10 S.E.2d 819, 823 (1940). This assignment of error is overruled.

IV. [sic] Trial Court's Oath

Defendant argues that the trial court erred in presiding over defendant's trial because the trial court lacked a "constitutional oath" on file with the clerk of court. Defendant's argument, which cites no legal authority other than the oath in question, is without merit. After reviewing the trial court's oath, we find that it complies with both the United States and North Carolina constitutions, as well as N.C. Gen. Stat. §§ 11-7 & 11-11 (2007). This assignment of error is overruled.

V. [sic] Vagueness

Defendant argues that the trial court erred in denying his motion to dismiss the charges against him because the statutes at issue were

void for vagueness. We disagree. A statute is "void for vagueness" if it forbids or requires doing an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application. When evaluating whether a person of ordinary intelligence could determine what conduct is prohibited,[o]nly a reasonable degree of certainty is necessary, mathematical precision is not required. The purpose of this fair notice requirement is to enable a citizen to conform his or her conduct to the law. *State v. Mello*, ___ N.C. App. ___, ___, ___ S.E.2d ___, ___(2009)(internal quotations and citations omitted).

Defendant was convicted of failure to register under N.C. Gen. Stat. § 20-111, which states:

It shall be unlawful for any person to commit any of the following acts:

(1) To drive a vehicle on a highway, or knowingly permit a vehicle owned by that person to be driven on a highway, when the vehicle is not registered with the Division in accordance with this Article or does not display a current registration plate. N.C. Gen. Stat. § 20-111 (2007).

Defendant was also convicted under N.C. Gen. Stat. §20-313, which states:

(a) On or after July 1, 1963, any owner of a motor vehicle registered or required to be registered in this State who shall operate or permit such motor vehicle to be operated in this State without having in full force and effect the financial responsibility required by this Article shall be guilty of a Class 1 misdemeanor.

N.C. Gen. Stat. § 20-313 (2007). The methods of demonstrating financial responsibility are contained in N.C. Gen. Stat. § 20-309(b): "Financial responsibility shall be a liability insurance policy or a financial security bond or a financial security deposit or by qualification as a self-insurer, as these terms are defined and described in Article 9A, Chapter 20 of the General Statutes of North Carolina, as amended." N.C. Gen. Stat. § 20-309(b) (2007).

The purpose of the statutes at issue is very clear. There is nothing in these statutes that "forbids or requires doing an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application." *Mello*, ___ N.C. App. at ___, ___ S.E.2d at ___. Defendant has failed to demonstrate how these statutes failed to give him the type of fair notice that is necessary to enable him or anyone else operating a motor vehicle to conform their conduct to the law. This assignment of error is overruled.

VI. [sic] Right to Counsel

Defendant argues that the trial court erred by denying his motion to continue so that he could obtain counsel and by denying defendant the right to counsel from defendant's son, an unlicensed layman. Defendant cites no authority for his argument regarding his motion to continue and it is therefore deemed abandoned. *See* N.C.R. App. P. 28(b)(6) (2008). We disagree with defendant's remaining contention. After defendant's motion to continue was denied, he requested that the trial court recognize his son, a layman, as "counsel to sit here and provide me aid and counsel during the trial." The trial court denied this request. Defendant argues that this decision deprived him of his Sixth Amendment right to counsel of his choice. The assertion of a "right" to be represented by a nonattorney has previously been rejected by this Court. *State v. Phillips,* 152 N.C. App. 679, 683, 568 S.E.2d 300, 303 (2002). This assignment of error is overruled. Defendant has failed to bring forth any argument regarding his remaining assignment of error. As such, we deem this assignment of error abandoned pursuant to N.C.R. App. P. 28(b)(6) (2008). We hold that "defendant, in spite of his own efforts, received a fair trial free from prejudicial error. . . ." *Phillips,* 152 N.C. App. at 687, 568 S.E.2d at 305.

No error.

Judges WYNN and BEASLEY concur.

APPENDIX B

No. 49P10 FIFTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

STATE OF NORTH CAROLINA

V

JAMES DONALD SULLIVAN

From NC Court of Appeals
(09-705)
From Pender
(08CRS1482)

ORDER

Upon consideration of the petition filed on the 27th of January, 2010, by Defendant in this matter for Appeal of Right Under G.S. 7A-31(c), the following order was entered and is hereby certified to the North Carolina Court of Appeals:

"Denied by order of the Court in conference, this the 16th of June, 2010."

s/Hudson, J.

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 23rd day of June, 2010.

Christie Speir Cameron
Clerk, Supreme Court of North Carolina
s/Shaula A. Brannan
Shaula A. Brannan
Assistant Clerk, Supreme Court of North Carolina

APPENDIX C

§ 20-313. Operation of motor vehicle without financial responsibility a misdemeanor.

(a) On or after July 1, 1963, any owner of a motor vehicle registered or required to be registered in this State who shall operate or permit such motor vehicle to be operated in this State without having in full force and effect the financial responsibility required by this Article shall be guilty of a Class 1 misdemeanor.

(b) Evidence that the owner of a motor vehicle registered or required to be registered in this State has operated or permitted such motor vehicle to be operated in this State, coupled with proof of records of the Division of Motor Vehicles indicating that the owner did not have financial responsibility applicable to the operation of the motor vehicle in the manner certified by him for purposes of G.S. 20-309, shall be prima facie evidence that such owner did at the time and place alleged operate or permit such motor vehicle to be operated without having in full force and effect the financial responsibility required by the provisions of this Article. (1957, c. 1393, s. 5; 1959, c. 1277, s. 3; 1963, c. 964, s. 5; 1975, c. 716, s. 5; 1993, c. 539, s. 388; 1994, Ex. Sess., c. 24, s. 14(c).)

APPENDIX D

§ 20-279.18. Alternate methods of giving proof.

Proof of financial responsibility when required under this Article with respect to a motor vehicle or with respect to a person who is not the owner of a motor vehicle may be given by filing:

(1) A certificate of insurance as provided in G.S. 20-279.19 or 20-279.20; or

(2) A bond as provided in G.S. 20-279.24; or

(3) A certificate of deposit of money or securities as provided in G.S. 20-279.25; or

(4) A certificate of self-insurance, as provided in G.S. 20-279.33, supplemented by an agreement by the self-insurer that, with respect to accidents occurring while the certificate is in force, he will pay the same judgments and in the same amounts that an insurer would have been obligated to pay under an owner's motor vehicle liability policy if it had issued such a policy to said self-insurer. (1953, c. 1300, s. 18.)

§ 20-279.33. Self-insurers.

(a) Any person in whose name more than 25 motor vehicles are registered may qualify as a self-insurer by obtaining a certificate of self-insurance issued by the Commissioner as provided in subsection (b) of this section. For the purpose of this Article, the State of North Carolina shall be considered a self-insurer.

APPENDIX E

Honeycutt v. Scheidt, 254 N.C. 607, 119 S.E.2d 777 (N.C. 1961)
254 N.C. 607 (N.C. 1961)
119 S.E.2d 777
Henry Grady HONEYCUTT, Petitioner,
v.
Edward SCHEIDT, Commissioner of Motor Vehicles of the State of North Carolina, Respondent.
No. 533
Supreme Court of North Carolina.
May 3, 1961

[119 S.E.2d 778] [Copyrighted Material Omitted]

[119 S.E.2d 779] T. W. Bruton, Atty. Gen., Thomas L. Young, Asst. Atty. Gen., for the Commissioner.

W. M. Nicholson, Ledford & Ledford, Charlotte, for petitioner.

DENNY, Justice.

G.S. § 20-16 provides: '(a) The Department shall have authority to suspend the license of any operator or chauffeur with or without preliminary hearing upon a showing by its records or other satisfactory evidence that the licensee: * * 9. Has, within a period of twelve (12) months, been convicted of two or more charges of speeding in excess of fift-five (55) and not more

than seventy-five (75) miles per hour, or of one or more charges of reckless driving and one or more charges of speeding in excess of fifty-five (55) and not more than seventy-five (75) miles per hour.'

It is provided in subsection (c) of G.S. § 20-16, as amended by Chapter 1242 of the Session Laws of 1959, that, '* * * Upon the restoration of the license or driving privilege of such person whose license or driving privilege has been suspended or revoked because of conviction for a traffic offense, any points that might previously have been accumulated in the driver's record shall be cancelled.' However, in cancelling the points accumulated over the period stipulated in the statute upon which a suspension may be ordered, such cancellation does not cancel or change the number of convictions upon which a license may be suspended under the provisions of G.S. § 20-16(a) (9). Moreover, Chapter 1242 of the Session Laws of 1959, amending our Uniform Drivers' License Act and establishing our present point system, in section 3 thereof, provides: 'This Act is in addition to all other laws relating to the suspension or revocation of operators' and chauffeurs' licenses. ' Therefore, the provisions of the 1959 Act, establishing the point system now in effect in this State, does not purport to repeal, modify or change in any manner the provisions of G.S. § 20-16(a) (9). Furthermore, it is provided in G.S. § 20-16, subsection (c): 'The Department shall maintain a record of convictions of every

person licensed or required to be licensed under the provisions of this article as an operator or chauffeur and shall enter therein records of all convictions of such persons for any violation of the motor vehicle laws of this State and shall assign to the record of such person, as of the date of commission for the offense, a number of points for every such conviction in accordance with the following schedule of convictions and points, except that points shall not be assessed for convictions resulting in suspensions or revocations under other provisions of laws: * * *.' (Emphasis added.)

In the case of *Fox v. Scheidt,* 241 N.C. 31, 84 S.E.2d 259, 261, this Court said: 'The General Assembly has full authority to prescribe the conditions upon which licenses to operate automobiles are issued, and to designate the agency through which, and the conditions upon which licenses, when issued shall be suspended or revoked. *State v. McDaniels,* 219 N.C. 763, 14 S.E. 2d 793. G.S.N.C. 20--Art. 2 vests exclusively in the State Department of Motor Vehicles the issuance, suspension and [119 S.E.2d 780] revocation of licenses to operate motor vehicles. *State v. Warren,* 230 N.C. 299, 52 S.E.2d 879.

"The right of a citizen to travel upon the public highways is a common right, but the exercise of that right may be regulated or controlled in the interest of public safety under

the police power of the State. The operation of a motor vehicle on such highways is not a natural right. It is a conditional privilege, which may be suspended or revoked under the police power. The license or permit to so operate is not a contract or property right in a constitutional sense." *Commonwealth v. Ellett,* 174 Va. 403, 4 S.E.2d 762, 767.

It was pointed out in *Harvell v. Scheidt,* 249 N.C. 699, 107 S.E.2d 549, that, it is well to keep in mind that the suspension or revocation of a driver's license is no part of the punishment for the violation or violations of traffic laws. It will be deemed that the court or courts in which the licensee was convicted, meted out the appropriate punishment under the facts and circumstances of each case. The purpose of the suspension or revocation of a driver's license is to protect the public and not to punish the licensee. However, the suspension or revocation of a driver's license should serve to impress such offender with the necessity for obedience to the traffic laws and regulations, not only for the safety of the public but for his own safety as well. *Harrell v. Scheidt,* 243 N.C. 735, 92 S.E.2d 182.

Likewise, in the case of *Lamb v. Clark,* 199 Va. 374, 99 S.E.2d 597, 600, Eggleston, J. (now C. J.), in speaking for the Court, said: 'One of the purposes of these orovisions authorizing the revocation or suspension of a driver's license

is to impress upon the licensee the duty and necessity of obeying the traffic laws of this State which the General Assembly has enacted for the safety of the public. *Commonwealth ex rel. Joyner v. Butler,* 191 Va. 193, 201, 61 S.E.2d 12, 16. Another, and even more important purpose, is to remove from the streets and highways a driver who is likely to cause injury and damage before a tragedy occurs. *Commonwealth ex rel. Lamb v. Hill,* 196 Va. 18, 24, 82 S.E.2d 473, 476.'

It is not unusual for a statute to prescribe a higher penalty in case of repeated convictions for similar offenses. But a warrant or indictment for 'a subsequent offense must allege facts showing that the offense charged is a second or subsequent crime within the contemplation of the statute in order to subject the accused to the higher penalty.' *State v. Miller,* 237 N.C. 427, 75 S.E.2d 242, 243; G.S. § 15-147; G.S. § 90-111; G.S. § 20-179; *State v. Mumford,* 252 N.C. 227, 113 S.E.2d 363; *State v. Wood,* 247 N.C. 125, 100 S.E.2d 207; *State v. White,* 246 N.C. 587, 99 S.E.2d 772; *State v. Stone,* 245 N.C. 42, 95 S.E.2d 77.

The proceeding now under consideration is civil and not criminal in its nature. Commonwealth v. Ellett, supra. Therefore, in our opinion, the respondent was duly authorized by the provisions of G.S. § 20-16(a) (9) and G.S. § 20-19 to suspend the petitioner's operator's

license for a period of four months, beginning with 24 March 1960, based on the two convictions for speeding in excess of 55 miles per hour in a 50 miles per hour zone, which occurred on 3 March 1959 and 6 November 1959.

The record on appeal does not expressly state that the petitioner was driving a truck each time he was arrested for speeding 60 miles per hour in a 50 miles per hour zone, but we so construe the record.

The judgment of the court below is Affirmed.